

# Jewish Contemporary Ethics Part 19: Judaism, Democratic Law and Autonomous Morality I

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In the next part of this series, we will turn our attention to broader questions regarding the intersection, conflicts and concordance between three key areas: (i) democratic law, (ii) Jewish law, and (iii)

our own moral convictions and autonomous ethical choices.

The purpose of the law and judiciary in liberal democracies is to establish universal legal standards, maintain stability and order, resolve disputes and protect liberties and rights. Yet while the question regarding the purpose of the law might seem straightforward, it has been the subject of debate for some time. Is the function of the law merely to avoid anarchy and disorder by imposing pragmatic rules on society, or should the law be based on ethical standards intended to promote morality among citizens?

In 1954 a committee led by British educationalist and Oxford don Sir John Wolfenden was established to determine whether secular law should prohibit individuals from engaging in behaviour which according to English law was deemed immoral.

Their report published in 1957 concluded that the role of criminal law was: “to preserve public order and decency, to protect the citizen from what is offensive and injurious, and to provide safeguards against the exploitation and corruption of others ... not to intervene in the private lives of citizens or to enforce any particular pattern of behaviour”.

While the remit of the report was specific, its implications were far reaching, sparking one of the most famous jurisprudential debates in the 20th century, between judge and legal philosopher Lord Patrick Devlin and Professor of Jurisprudence at Oxford University, Herbert

Hart. Devlin argued that both public and private behaviour deemed morally improper should be subject to legal sanction, in order to preserve the moral fabric of society. Hart based his opposing position on the work of 19th century philosopher J.S Mill, who held that the only purpose for which any authority can exercise power by restricting freedom is in a case that prevents one individual from causing harm to others. Hart therefore argued that the government is not entitled to criminalise behaviour that is deemed immoral by some in society, unless it is harmful to others.

Liberal democracies generally favour Hart’s position, which establishes a separation between the law and ethics. In wider society, democratic laws may be based on moral ideals but the legality or illegality of an act generally says nothing about its moral value.

In contradistinction, halacha (Jewish law) is based on the Written and Oral Torah and is a manifestation of God’s infinite wisdom. The function of halacha is not merely to prevent anarchy, but to establish a system which sensitises individuals to become decent, honourable and virtuous in their behaviour.

The Torah itself instructs us to: “do what is good and proper in the eyes of the Lord, your God” (Devarim 12:28). As we shall see in the next article, this implies that Jewish law is not limited to a morality of Divine command, but urges us to grow as ethical beings beyond the realms of what is compulsory, to achieve even greater heights of moral sensitivity.

